



Indiana Department of Environmental Management

Office of Water Management

Rule Fact Sheet

June 14, 2000

Development of Amendments to Rules to Establish Wetland Water Quality Standards and New Rules to Establish Procedures and Criteria for Review of Projects Requiring Water Quality Certification Under Section 401 of the Clean Water Act

#99-58 (WPCB)

Overview

The Indiana Department of Environmental Management (IDEM) has developed draft rule language to amend rules concerning the water quality standards by incorporating wetland water quality standards and for a new article to establish procedures and criteria for review of projects requiring water quality certification under Section 401 of the Clean Water Act. These rules are to be presented to the Water Pollution Control Board on June 14, 2000, for consideration of preliminary adoption.

Citations Affected

This rulemaking adds new rules 327 IAC 2-1.8, 327 IAC 17-1, 327 IAC 17-2, 327 IAC 17-3, 327 IAC 17-4, 327 IAC 17-5, 327 IAC 17-6, and 327 IAC 17-7.

Affected Persons

This rule will affect persons planning activities that require a water quality certification under Section 401 of the federal Clean Water Act including those regulated by the U.S. Corps of Engineers under Section 404 of the Clean Water Act and by the Federal Energy Regulatory Commission.

Reason(s) for the Rule

Indiana is required by federal law to establish water quality standards for all waters of the state includin

wetlands. The state is also required to review projects that include activities requiring a Section 401 water quality certification. To date, this program has been implemented using IDEM's general statutory authority and the water quality standards rules (327 IAC 2). These new rules will provide the state with specific wetland water quality standards and procedures and criteria to be used by IDEM's Office of Water Management when reviewing applications for Section 401 water quality certification under the federal Clean Water Act. In order to issue a water quality certification, the state is required to review the proposed activity and determine whether the activity will meet certain federal and state requirements including state water quality standards. The water quality certification must contain conditions necessary to ensure compliance with applicable laws and regulations.

Economic Impact of the Rule

The requirements of these rules follow the current procedures used by the IDEM Office of Water Management staff in reviewing applications for a Section 401 water quality certification and will cause little additional economic impact.

Benefits of the Rule

These rules will be a part of the state water quality standards and implementing regulations. These rules will contain water quality standards more appropriate and specific to wetlands than those contained in the current rules. The 401 implementation rules will clarify what is required of an applicant and what procedures the department will utilize to review applications. This should result in more consistent application review by department staff and an expedited review process.

Description of the Rulemaking Project

This rulemaking was initiated with a first notice published April 1, 1999, in the *Indiana Register*. Outreach was conducted with stakeholders from a variety of backgrounds, including the regulated community, citizen groups, and other state agencies, invited to participate in work group meetings, and the meetings were kept open for all to attend. Six external work group meetings were held in Indianapolis as well as meetings conducted around the state by the wetland water quality staff to explain the need for rulemaking and discuss specific rule language.

Scheduled Hearings

First Public Hearing: June 14, 2000, at the WPCB meeting held at the Indiana Government Building South.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding

areas.

3) Zoning classifications.

4) The nature of the existing air quality or existing water quality, as appropriate.

5) Technical feasibility, including the quality conditions that could be reasonably be achieved through coordinated control of all factors affecting the quality.

6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:

(A) human, plant animal, or aquatic life; or

(B) the reasonable enjoyment of life and property.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the department's responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Water Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/ hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule becomes effective 30 days after filing with the Secretary of State.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from MaryAnn Stevens, Rules Section, Office of Water Management, (317) 232-8635 or (800) 451-6027 (in Indiana).